



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**WAGGONER CARR
ATTORNEY GENERAL**

June 7, 1966

Honorable Robert S. Calvert
Comptroller of Public Accounts
Austin, Texas

Opinion No. C-705

Re: Whether control of the building and grounds purchased with Texas Employees Retirement System Trust funds is within the jurisdiction of the State Board of Control or the Retirement System.

Dear Mr. Calvert:

By two letters to this office, one dated May 16, 1966, and the other dated May 19, 1966, you have requested an opinion in regard to the above matter. We quote from your letters as follows:

Letter of May 16th

"The Texas Employees Retirement System, out of Trust funds (Article 6228a R.C.S.) under the control of that agency has recently completed an office building and it is now being occupied by the retirement system.

". . . .

"The management and control of the building and grounds necessarily calls for the expenditure of funds from the State Treasury or the Trust funds with the State Treasurer under the control of the retirement system. This expense raises the question as to what agency shall supervise the maintenance and operation of the building and grounds.

"Please advise if the control of the building and grounds is under the jurisdiction of the State Board of Control or the Retirement System?"

Letter of May 19th

". . . .

"It was further discussed at that time, in anticipation of accounts for repair and improvements of the building and grounds which could not be considered as a part of the original cost to submit to you the question now in your office. The information needed by me is to determine what approval should be required for passing for payment bills covering the type in question; Employees Retirement System, Board of Control or both?"

Article 6228a, Section 2, Vernon's Civil Statutes, as amended, provides, in part, as follows:

"A. The Employees Retirement System of Texas heretofore established under the laws of this State is hereby continued in corporate existence . . . and the management and operation of said system from the effective date of this Act shall be governed by the provisions of this Act.

"B. Said system shall continue to be known as the Employees Retirement System of Texas, and by such name all of its business shall be transacted, all of its funds invested, and all its cash, securities and other properties shall be held.

". . . .

"D. The Retirement System shall have the powers and privileges of a corporation and shall have also the powers, privileges and immunities hereinafter conferred."

Section 6 of Article 6228a, provides in part that:

"1. The General Administration and responsibility for the operation of the Retirement System and for making effective the provisions of the Act are hereby vested in a State Board of Trustees"

Section 7 of Article 6228a, provides that:

"C. The Treasurer of the State of Texas shall be the custodian of all bonds, securities, and funds. All payments from said funds shall be made by him on warrants drawn by the State Comptroller of Public Accounts supported only upon vouchers signed by the Secretary of the Retirement System and the Chairman of the State Board of Trustees. A duly attested copy of a resolution of the State Board of Trustees designating such persons shall be filed with said Comptroller as his authority for issuing such warrants."

Section 13 of Article 6228a provides, in part, as follows:

". . . All provisions of the law inconsistent with the provisions of this Act are hereby repealed to the extent of such inconsistency"

The land and building in question were purchased pursuant to Senate Concurrent Resolution No. 17, Acts 59th Legislature, Regular Session 1965, page 1978, which contained, in part, the following:

"WHEREAS, The Board of Trustees of the Employees Retirement System of Texas has requested Legislative advice concerning the acquisition of suitable real property and the construction of an office building for the System; and

". . . .

"WHEREAS, Under the provisions of the Retirement Act, funds are available to acquire both the land and the building contemplated by the Board of Trustees of the Employees Retirement System . . . ; and

"WHEREAS, It will not require any additional legislation other than this resolution for the Board of Trustees to acquire such land and con-

struct a building for the Employees Retirement System to be paid from the Expense Fund; now therefore, be it

"RESOLVED, By the Senate of the State of Texas, the House of Representatives concurring, that the Board of Trustees of the Employees Retirement System of the State of Texas be authorized to purchase a suitable site and to erect thereon a building adequate to house the employees and the files of such System.

". . . ."

It is clear from those portions of Article 6228a quoted above that the Retirement System is a corporate entity. Section 2. B. of Article 6228a, quoted above, provides that all properties of the Retirement System shall be held in the name of the "Employees Retirement System of Texas".

Article 6228a places the administration of the Retirement System in the hands of the Board of Trustees, and the State Treasurer is made custodian of all bonds, securities, and funds belonging to the Retirement System. The statute provides that all payments from Retirement System funds under the custodianship of the State Treasurer shall be made by the Treasurer on ". . . warrants drawn by the State Comptroller of Public Accounts supported only upon vouchers signed by the Secretary of the Retirement System and the Chairman of the State Board of Trustees." (Emphasis added.)

Article 665, Vernon's Civil Statutes, provides, in part, that:

"The State Board of Control shall have charge and control of all public buildings, grounds and property of the State, . . . and is charged with the responsibility to properly care for and protect such property from damage, intrusion or improper usage And the Board shall be authorized to provide for the allocation of space in any of the public buildings to the departments of the State Government and for the uses authorized by law to

have and occupy space in the State buildings, and shall be authorized to make any repairs to any such buildings or parts thereof necessary to the serviceable accomodation of the uses to which such buildings or space therein may be allotted."

If the building and grounds in question were held to be under the control of the Board of Control pursuant to Article 665, then by virtue of such holding, the Board of Control would be vested with the right to provide for the allocation of space in the building to the various departments of the State government. Such an allocation of space for the use by other departments of the State government would be inconsistent with the legislative intent as manifested in Article 6228a and Senate Concurrent Resolution No. 17, cited above, and would be in contravention of the trust nature of the property, as hereinafter discussed.

This office held in Attorney General's Opinion WW-565 that the funds of the Employees Retirement System are the property of a trust created for the benefit of a class of citizens of this State. Opinion WW-565 was based on the authority of Friedman v. American Surety Co. of New York, 137 Tex. 149, 151 S.W.2d 570 (1941) wherein the Supreme Court of Texas was concerned with the status of the Employees Compensation Fund and the necessity for specific legislative appropriation prior to the expenditure of certain monies belonging to the fund. In concluding that legislative appropriation was not necessary, the Court stated:

" . . . the fund created by the Act in its very inception becomes the property of a trust created for the benefit of a class of citizens of this State The taxes are levied and collected for such fund, and not for the State in its sovereign capacity."

It necessarily follows that the building and grounds in question having been acquired with trust funds, are impressed with the trust and remain trust property, subject to the management and control of the Board of Trustees of the Texas Employees Retirement System and do not fall within that category of property placed under the management of the State Board of Control

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by Article 665.

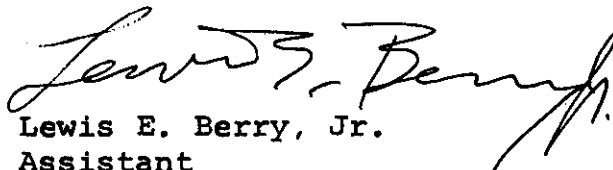
S U M M A R Y

Control of building and grounds purchased with Texas Employees Retirement System Trust funds is within the jurisdiction of the Board of Trustees of the Texas Retirement System. Payment of accounts for maintenance of and improvements to the building and grounds of the Retirement System should be made by the Treasurer out of the Texas Employees Retirement System Trust funds on warrants drawn by the State Comptroller supported only upon vouchers signed by the Secretary of the Retirement System and the Chairman of the State Board of Trustees.

Yours very truly,

WAGGONER CARR
Attorney General

By:


Lewis E. Berry, Jr.
Assistant

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APPROVED:
OPINION COMMITTEE

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